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JUL 18 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THOMAS LEO CLARK, III,
Plaintiff,

v.

CITY OF HAYWARD, et al.,
Defendants.

) Case No. C 14-1297 PSG (PR)

) **ORDER OF DISMISSAL WITH**
) **LEAVE TO AMEND**

Thomas Leo Clark, III, a pretrial detainee proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. The court has granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses Defendants and gives Clark leave to amend to name a proper defendant.

I. DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.¹ In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous,

¹ See 28 U.S.C. § 1915A(a).

malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief.² *Pro se* pleadings must, however, be liberally construed.³

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law.⁴

B. Plaintiff's Claim

Clark is a wheelchair-bound pretrial detainee. He claims that when he was brought to the courthouse in Hayward, the holding cell was not equipped for individuals in wheelchairs and when he was pushed into the holding cell, his wheelchair scraped both sides of the cell. Clark further states that the restroom area was not wheelchair accessible. Finally, Clark intimates that the courthouse elevator for detainees was not wheelchair accessible, and Clark was instead transported through the main lobby to the public elevator while handcuffed to his wheelchair. Liberally construed, Clark has stated a cognizable claim under Title II of the Americans with Disabilities Act of 1990⁵ ("ADA").

However, Clark names as Defendants: the City of Hayward, "Hayward City Courthouse," and the Alameda County Sheriff's Office. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."⁶ "Public entity" includes any state or local government or any department, agency, special purpose district or other instrumentality

² See 28 U.S.C. § 1915A(b)(1), (2).

³ See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

⁴ See *West v. Atkins*, 487 U.S. 42, 48 (1988).

⁵ See 42 U.S.C. § 12101 *et seq.*

⁶ 42 U.S.C. § 12132.

of a state or states or local government.⁷ The “Hayward City Courthouse” is a building, not a public entity. While the Alameda County Sheriff’s Office and the City of Hayward are public entities, they are not charged with operating the courthouse. Rather, the courthouse in Hayward falls under the jurisdiction of the County of Alameda. Clark did not name the County of Alameda as a defendant. However, Clark will be given thirty days to amend to name the proper defendant.⁸

II. CONCLUSION

For the foregoing reasons, the court hereby orders as follows:

1. Defendants are DISMISSED. Clark is given leave to amend the complaint to name a proper defendant.

2. Clark shall file an AMENDED COMPLAINT within thirty days from the date this order is filed. The amended complaint must include the caption and civil case number used in this order (C 14-1297 PSG (PR)) and the words AMENDED COMPLAINT on the first page. Clark may not incorporate material from the prior complaint by reference. Failure to file an amended complaint within thirty days and in accordance with this order will result in a finding that further leave to amend would be futile, and this action will be dismissed.

3. Clark is advised that an amended complaint supersedes the original complaint. “[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in the amended complaint.”⁹ Defendants not named in an amended complaint are no longer defendants.¹⁰

4. It is Clark’s responsibility to prosecute this case. He must keep the court informed of any change of address by filing a separate paper with the Clerk headed “Notice of

⁷ See 42 U.S.C. § 12131(1)(A) & (B).

⁸ See *Barsten v. Dep’t of the Interior*, 896 F.2d 422, 423-24 (9th Cir. 1990).

⁹ *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).

¹⁰ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

1 Change of Address," and must comply with the court's orders in a timely fashion. Failure to do
2 so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
3 Civil Procedure 41(b).

4 IT IS SO ORDERED.

5 DATED: 7.18.14

Paul S. Grewal
PAUL S. GREWAL
United States Magistrate Judge